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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   DAVID DANIEL NEVAREZ,   No. 21-cv-01752-ADA-BAM (PC)

12   Plaintiff,   ORDER DENYING PLAINTIFF'S MOTION
                                        FOR RELIEF FROM FILING FEE
13   v.
                                        (ECF No. 12)
14   KLEIN, et al.,

15   Defendant.

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17   Plaintiff David Daniel Nevarez is a state prisoner who previously filed a civil rights action

18   pursuant to 42 U.S.C. § 1983, proceeding pro se and in forma pauperis.

19   On March 2, 2022, the court screened Plaintiff's complaint and issued an order granting

20   him leave to file either a first amended complaint or a notice of voluntary dismissal. (ECF No.

21   10.) Plaintiff subsequently filed a notice of voluntary dismissal, and the Court terminated this

22   action without prejudice. (ECF Nos. 10, 11.)

23   Currently before the Court is a November 18, 2022 letter from Plaintiff filed as a Motion

24   for Relief from Filing Fee. (ECF No. 12.) In the letter, Plaintiff states that the Court notified him

25   that he filed in the wrong court, but that he could pull back his case, which he did. (*Id.*) The

26   letter further states that Plaintiff does not understand why he must still pay the $350.00 filing fee

27   and that he does not have enough money to pay the fee. (*Id.*)

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1   First, the Court notes that the Magistrate Judge's screening order does not state that

2   Plaintiff had filed in the wrong court, but rather advises him that his complaint fails to state a

3   cognizable claim for relief. (ECF No. 9 at 4.) Second, in his application to proceed in forma

4   pauperis, filed December 10, 2021, Plaintiff authorized the withdrawal of funds from his trust

5   account for the purpose of payment of the filing fee. (ECF No. 2 at 2.) The Court granted

6   Plaintiff's motion to proceed in forma pauperis in this action on December 22, 2021. (ECF No.

7   8.) In that order, the Court explained to Plaintiff that, while he was relieved of the obligation to

8   pre-pay the filing fee in this action, he was still obligated to pay the statutory filing fee of

9    $350.00, in monthly payments of twenty percent of the preceding month's income credited to his

10   trust account. (*Id.* at 2.) The Director of the California Department of Corrections, or a designee,

11   was ordered to send the Clerk of Court payments from Plaintiff's account each time the amount in

12   the account exceeds $10.00, until the statutory filing fee is paid in full. (*Id.* (citing 28 U.S.C. §

13   1915(b)(2))).

14   The entire $350.00 filing fee is statutorily required, and the Court must collect it from

15   Plaintiff's institutional account regardless of the outcome of the action. *See, e.g.*, *Myers v.*

16   *Pulido*, No. 1:16-cv-00638-SAB-PC, 2016 WL 6723937, at *1 (E.D. Cal. Nov. 14, 2016); *see*

17   *also Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) ("Under the PLRA, all prisoners who

18   file IFP civil actions must pay the full amount of the filing fee."). Plaintiff's decision to dismiss

19   this action voluntarily does not warrant relief from paying the filing fee. To the extent Plaintiff

20   believes he is required to pay the $350.00 as a lump sum, however, that belief is incorrect. The

21   Director of the California Department of Corrections, or a designee, must continue to collect

22   funds from Plaintiff's institutional account in accordance with the instructions the Magistrate

23   Judge provided in the order granting Plaintiff's motion to proceed in forma pauperis. (*See* ECF

24   No. 8.)

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1   Accordingly,

2   1.   Plaintiff's motion for relief from the filing fee, (ECF No. 12), is denied; and

3   2.   This action remains closed.

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6   IT IS SO ORDERED.

7   Dated: December 20, 2022

     UNITED STATES DISTRICT JUDGE

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